

FISCAL MEMORANDUM

SB 3280 – HB 3637

May 6, 2008

SUMMARY OF AMENDMENTS (018023, 017444): Amendment 018023 deletes the language of the original bill and amends the open records law in several ways. Requires all public government records be open for personal inspection by any citizen of Tennessee during business hours. Gives the custodian of the public record seven business days to make information available, deny the request in writing, or provide a time frame necessary for producing the record. Authorizes the records custodian to require the requester to pay actual cost for producing the record after five hours, including the making of copies and the hourly wage of the employee who produces the record after one hour. After the Office of Open Records Counsel (ORC) develops a schedule of reasonable charges, this authorization will be voided. Requires the records custodian to notify elected or appointed public officials and government employees on the date a request is made for public records which name or pertain to the official. Establishes additional procedures for open records, including authorization for requesters to make requests in writing and present photo identification. Gives circuit courts, in addition to chancery courts, jurisdiction over open records disputes. Requires the Municipal Technical Advisory Service (MTAS), the County Technical Assistance Service (CTAS), the Tennessee School Board Association, the Utility Management Review Board, and the State Emergency Communications Board to provide training to local government entities regarding the open meetings law. Establishes in general law the Office of Open Records Counsel (ORC) and creates an advisory committee. Requires the ORC and advisory committee to establish a schedule of reasonable charges related to producing records, a policy for frequent and multiple requests of records, a safe harbor policy, and a notification policy. Amendment 017444 defines business hours for public hospitals and adds a member from public hospitals to the advisory committee.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$22,500/One-Time
Increase State Expenditures - \$140,400/Recurring

Increase Local Expenditures – Exceeds \$100,000/Recurring

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Increase State Expenditures – \$2,500/One-Time
\$169,700/Recurring**

Other Fiscal Impact – Local governments will experience an increase in expenditures due to additional requirements placed on the custodian of public records. This amount will differ from local government to local government depending on population and political climate. The increase in expenditures may be offset by fees levied for copies and hourly wages. However, due to the number of variables a precise estimate cannot be reasonably determined.

Funding for this bill in the amount of \$140,500 is included in the Governor's proposed FY08-09 budget.

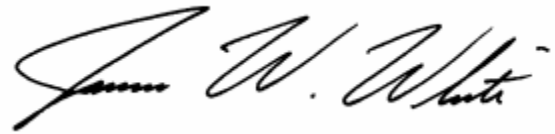
Assumptions applied to amendments:

- According to the Comptroller, the statutory establishment of the ORC will require two full-time legal professionals and one administrative support person. Legal professional's total compensation of \$100,000 (\$66,000 salary, \$34,000 benefits [34%]). Administrative support person's total compensation of \$40,500 (\$26,730 salary, \$13,770 benefits [34%]). The FY08-09 Governor's Budget includes one professional and one administrative support person. The second professional position will be filled by an existing employee of the Comptroller's office and will negate the need to hire an additional employee.
- The Comptroller's office will experience an increase in state expenditures of \$15,800, including \$5,760 for travel for the ORC, \$5,000 for software development and equipment, and \$5,000 for educational materials and programs.
- State expenditures will increase \$2,500 one-time and \$7,500 recurring for training programs. MTAS and CTAS have already established training programs on open government and will not require additional resources. The Tennessee School Board Association and the State Emergency Communications Board can incorporate open government training into existing training with no significant additional cost. The Utility Management Review Board does not currently have such training in place. The Board estimates a recurring increase in expenditures of \$7,500 for training program travel and materials per year. These programs will be held annually in five locations statewide. The Board estimates a one-time increase in expenditures of \$2,500 for development of the program.

- State expenditures will increase \$5,900 for travel costs for the Advisory Committee ([7 non-legislative members for 4 meetings per year with \$131.56 {\$0.46 per mile x 286 miles} travel reimbursement] + [2 legislative members for 4 meetings per year with \$120 travel reimbursement and \$161 per diem]).
- Local government expenditures will increase as a result of additional requirements placed on the custodian of public records, especially the notification requirement. This increase may be offset by fees charged for producing records.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" and last name "White" clearly legible.

James W. White, Executive Director

/kmc